Nos. 305 and 369.

Motion for Mandate.

Supreme Court, U. S.
FILED
APR 29 1901
JAMES H. McKENNEY,
Clerk.

Filed April 29, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Numbers 305 and 369.

CHARLES W. LYNDE, PLAINTIFF IN ERROR,

vs.

MARY W. LYNDE.

AND

MARY W. LYNDE, PLAINTIFF IN ERROR,

vs.

CHARLES W. LYNDE.

ON WRITS OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION FOR IMMEDIATE ISSUANCE OF MANDATES.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-27-'01

Supreme Court of the United States.

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ON WRITS OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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Now comes Mary W. Lynde, by her attorney of record, and moves this honorable court to direct the mandate in the above cases to issue forthwith, and as ground for such motion respectfully refers to the annexed affidavit.

JAMES WESTERVELT,
Attorney for Mary W. Lynde.

SIR: Please take notice that on Monday, the 29th instant, the undersigned will move this court, at the Capitol, in Washington, at the opening of the court on said day, or as soon thereafter as counsel can be heard, for an order directing that the mandates issue at once, in accordance with the decision of this court, on the above writs of error.

Please take further notice that said motion will be founded upon the annexed affidavit, of which a copy is herewith served upon you, as well as on all papers and proceedings heretofore had herein.

Yours, etc.,

JAMES WESTERVELT,
Attorney for Mary W. Lynde, Def't in Error.

To GEORGE S. INGRAHAM, Esq.,
Att'y for Pl'ff in Error, 164 *Montague St., Brooklyn.*

STATE OF NEW YORK, }
County of New York, } ss:

Frederic C. Irons, being duly sworn, says that he is a clerk in the office of James Westervelt, above named; that on the 23d day of April, 1901, he served the above notice, with the affidavit thereto annexed, on George S. Ingraham, Esq., at his number, 164 Montague street, Brooklyn, by leaving the same with the person in charge of the said office.

FREDERIC C. IRONS.

Sworn to before me this 23d day of April, 1901.

CHARLES M. BLACK,
Notary Public, New York County.

STATE OF NEW YORK, }
City and County of New York, } ss.:

James Westervelt, being duly sworn, says that he is attorney for Mary W. Lynde, above named; that this cause was brought before this court from the supreme court of the State of New York on cross-writs of error to correct the judgment entered against the defendant in an action wherein Mary W. Lynde was plaintiff and Charles W. Lynde was defendant, on June 16, 1899, for $9,393.38.

That after the entry of said judgment actions were begun in the supreme court of New York by Mary W. Lynde against Charles W. Lynde to collect other money due under the terms of the decree of the court of chancery of New Jersey, dated December 28, 1897, and which had accrued since the date of said decree, and were therefore not included in the New York judgment of June 16, 1899; that Charles W. Lynde, in order to stay said subsequent actions, gave certain bonds and undertakings, whereby he agreed, in case the judgment which was afterwards brought before this court, as above set forth, was "not reversed by the Supreme Court of the United States," or if it were decided that the decree of the court of chancery of New Jersey was valid and effectual as against the defendant therein, that then he would pay all sums due or to grow due according to the terms of said decree of said court of chancery.

Deponent further says that there is now due from Charles W. Lynde to Mary W. Lynde accordingly over $26,400; that the said Mary W. Lynde has no means of support other than her own exertions, and that said Charles W. Lynde is

worth over $540,000 and has an annual income of $22,000; that he has fought and opposed this action for over five years, upon every possible ground; that most, if not all, of his pretexts for defending the same have been frivolous, as is shown by his suing out a writ of error, No. 305 of this term, in manner and form as he did; that there is no reason why he should not be compelled to pay the amount due immediately, now that the case has been decided by this court; that Mary W. Lynde is in poor health and has been so for many months past, and is therefore unable to earn as much for her support as formerly, and is in greater need of the money in order to properly care for herself and her health.

Deponent further says that three other actions in the New York supreme court have been stayed pending the result of this action; that defendant below has been compelled to give bonds on appeal, amounting in the aggregate to $101,000, and has had to deposit with his surety thereon securities of great value, which will not be released until a settlement is made.

Wherefore deponent prays that this honorable court will be pleased to direct that the mandate issue at once to the supreme court of New York in accordance with the decision and opinion of this court herein.

JAMES WESTERVELT.

Subscribed and sworn to at New York city, in the county and State of New York, before me this 23d day of April, 1901.

[SEAL.] HENRY B. GAYLEY,
Notary Public, New York County.

[Endorsed:] United States Supreme Court. Charles W. Lynde, pl'ff in error, *vs.* Mary W. Lynde, def't in error. No. 305, October term, 1900. Affidavit and notice of motion that mandate issue. James Westervelt, attorney for def't in error, 52 Wall street, New York. Due service of a copy of the within affidavit and notice is hereby admitted. Dated New York, April 23, 1901. —— ——, attorney for pl'ff in error.